O. Sales of Goods 53

1953

File No.

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P 6E Legal Department

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Subject:—

Opinion on the Sale of Goods Act

File No. O. Sales of Goods 153

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C O N T E N T S.

Legal Department File No.C.Sales.of.Goods/53.

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		Opinion on the Sale of Goods Act.	
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In their letter dated 18-2-1952 Messrs.Parsram & Bros. had offered to purchase 2 cases of 6s and 10 cases of 10 to 20s. Two cases of 6s were accordingly allotted to them by the State Textile Controller and they were lifted by the firm.Their contention is that as out of the total number of 12 cases indented for, only two had been allotted of which they took delivery, the matter ended there and therefore they were not bound to abide by any allotment orders made subsequently.This contention has no force. There is nothing in the correspondence to show that the allotment would be in one lot and this does not also appear to be usual.

2.The real difficulty has however arisen on account of the second allotment made by the S.T.C. on 17-3-1952. According to this Messrs.Parsram Bros. were allotted 10 cases, 9 of which conformed to their indent and one case was of 6s.As they had already taken delivery of 2 cases of 6s (which was the number of cases they had asked for) they say theyare not bound by the second allotment.It is conceded that the third case of 6s was not in accordance with their indent,but the remaining 9 cases allotted to them were in accordance with their indent,and therefore they were not justified in rejecting the said 9 cases. This view is not correct.Under sub-section (3) of section 37 of the Sale of Goods Act, 1930, when the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.In Moore & Co. v. Landauer & Co. 1921, 1K.B.75 there was a contract for the sale and purchase of tins of canned fruits,the buyers stipulated that they should be packed in cases containing thirty tins each, payment to be per dozen tins.The sellers tendered the whole quantity ordered, but about one-half was packed in

cases each containing twenty-four tins only.The umpire found that the market value of the consignment and were not bound to accept cases properly packed while rejecting the rest.Inso holding Rowlatt.J.observed :"The words "mixed with" in section 30(3) of the Sale of Goods Act,1893 (56 & 57 Vict C71) which is similar to sec.37(3) of the Indian Sale of Goods Act, cannot refer to physical confusion but are equivalent to "accompanied by". Messrs.Parsram & Bros. by their letter dated 13-2-1952 had asked for 2 cases of 6s yarn which were allotted to them and taken delivery of.By the allotment made on 7-3-1952 the S.T.C.allotted to them 9 cases of 14 to 20 counts (which were according to their demand) plus one case of 6s contrary to their indent.They were not therefore legally bound to take delivery of the said cases.Section 37 gives to the buyer in such cases an option to accept the goods which are in accordance with the contract and reject the rest or to reject the whole.In this case it can be said they accepted the other alternative.There is therefore much force in the contention raised by them;and the forfeiture of the deposit ordered by the A.T.C.'s order dated 21-11-1952 cannot be justified.Their request for the return of amount of deposit may therefore be granted.

Sd/-J.R.Dhurandhar
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Remembrancer of Legal Affairs

U.R. to S.T.C.No. 317, dated the 29 th May 1953.

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Office of the R.L.A.

Shri Meman an advocate has, on behalf of his client M/s.India Hosiery Factory of Bombay, given a notice to the State Textile Controller, Bombay, calling upon him to settle the claim of his clients for a difference between the prices of Madura yarn and yarn actually delivered to them and threatening to take suitable action if the State Textile Controller does not settle the claim. The State Textile Controller has forwarded the papers to the Remembrancer of Legal Affairs for advice whether any suit filed by M/s.IndiaHosiery Factory against Government will be defensible.

2.According to clause 9 of the agreement between the State Textile Controller and India Hosiery Factory which is at pages 5-7 ante, in case of any dispute arising out of the agreement the matter is to be referred to the Supply Commissioner and Secretary to Government, Civil Supplies Department and his decision in that respect is to be final and binding.In view of this, even if the party decides upon any action the party will not be able to file a suit unless the matter is referred to the arbitration of the Supply Commissioner.Clause 10 of the said agreement provides that for the purpose of institution of any suit or defence of any suit arising out of the contract, the courts in Bombay City alone shall have the jurisdiction to try and hear and decide the matter.The purpose of this clause is not known but the intention, it appears is that the jurisdiction of the court is not ousted and that after the arbitration proceedings are over, if any suit is filed in the court for enforcing the award that should be filed in the courts in Bombay.

3.At the auction held on 4th February 1953, M/s.India Hosiery Factory agreed to purchase 4 bales of Jayabharat Mills and 10 bales of Madura Mills (the description is given at page 9) The agreement in that respect was executed on the 6th Febru 1953.According to the agreement, the India Hosiery Factory wa to complete payment and take the full delivery before 20th

February 1953 and if it failed to do so, the firm agreed to pay over-storage charges to Government. On 25th April 1953, the Firm lifted the bales through the Provincial Industries Co-operative Association, Bombay, after paying over-storage charge of Rs.315/-. On 11th May 1953, the firm complained to the District Magistrate, Ahmednagar that all the cases of Jayabharat Mills were sent to them. On 14th May 1953, it informed the State Textile Controller that out of the 14 cases, ten were of Madhavji Mills and not of Madura Mills as mentioned in the auction sale notice and requested the State Textile Controller that as the yarn was not suitable for them, it should be exchanged for 10 cases of Madura bales. The State Textile Controller is of the view that the firm should have inspected the bales before taking delivery and as they had failed to do so, their request for exchange was refused.

4. Under Section 64 of the Indian Sale of Goods Act, in the case of a sale by auction, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. In this case the sale was by auction. The sale was therefore complete. Section 15 of the Indian Sale of Goods Act provides that where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. Section 37(1) provides that where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole. Section 41(1) of the said Act provides that where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. Section 42 of the said Act further provides that the buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a

reasonable time,he retains the goods without intimating to the seller that he has rejected them.In this case,it appears the deliver was taken by M/s-India Hosiery Factory thro gh their agents,the Ahmednagar District Industrial Co-operative Association and the Provincial Industrial Co-operative Association,Bombay.It is true that these two associations did not inspect the goods but when the goods were received by the India Hosiery Factory,the said Factory within a reasonable time informed the District Magistrate and the State Textile Controller of the rejection of the goods and even though the delivery was given to them the goods cannot be said to have been accepted by them.In the circumstances,it will not be possible for Government to successfully defend any arbitration or other legal proceedings which the party might institute against the Government.The parties claim to the refund of the difference between the prices of the two kinds of bales will have therefore to be entertained.

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Remembrancer of Legal Affairs.

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F.R. to S.T.C.,No.G-738, dated 2nd December 1953.